

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
General Communication, Inc.	)	FOIA Control No. 2003-208
On Request for Inspection of Records	)	
	)	
Alascom Petition for Waiver from the	)	WC Docket No. 03-18
Commission Rule and Order Requiring an	)	
Annual Tariff Filing	)	
	)	

**PROTECTIVE ORDER**

**Adopted: July 10, 2003**

**Released: July 10, 2003**

By the Deputy Chief, Pricing Policy Division:

1. On February 26, 2003, General Communication, Inc. (GCI) filed a request pursuant to the Freedom of Information Act (FOIA) seeking certain materials relied upon by Alascom, Inc. (Alascom) in formulating and supporting its Tariff FCC No. 11.<sup>1</sup> Alascom's Tariff FCC No. 11 provides rates, terms, and conditions for the origination and termination of interstate traffic to Alaska. *GCI's FOIA Request* states that it requires this information adequately to evaluate a claim by Alascom that cost allocation data underlying Alascom's Tariff FCC No. 11 has become stale and dated.<sup>2</sup> Alascom made this claim in a petition for waiver asking that the Commission excuse Alascom from making its required annual Tariff FCC No. 11 filing for 2002.<sup>3</sup> On April 10, 2003 the Commission's Wireline Competition Bureau (Bureau) agreed to release materials in its possession that are responsive to *GCI's FOIA Request*, subject to a protective order that would ensure that the documents considered confidential or proprietary by Alascom are accorded the necessary protection.<sup>4</sup>

2. On April 24, 2003, both GCI and Alascom filed Applications for Review of the

<sup>1</sup> Letter from Timothy R. Hughes, Counsel to GCI, to FOIA Officer, Federal Communications Commission (Feb. 26, 2003) (*GCI's FOIA Request*).

<sup>2</sup> *GCI FOIA Request* at 4.

<sup>3</sup> *Alascom Petition for Waiver of Commission's Rules Regarding its Annual Tariff FCC No. 11*, WC Docket No. 03-18 (*Alascom's Waiver Petition*).

<sup>4</sup> Letter from Joseph T. Hall, Assistant Bureau Chief, Management, Wireline Competition Bureau to Timothy R. Hughes, Drinker, Biddle & Reath, FOIA Request Control No. 2003-208 (WCB Apr. 10, 2003) (*FOIA Response*).

Bureau's *FOIA Response*.<sup>5</sup> These Applications for Review, among other requests, sought changes in the protective order issued with the *FOIA Response*. In an effort to resolve *GCI's FOIA Request*, we adopt this Protective Order incorporating many of the changes sought by the parties in their Applications for Review, and superseding the protective order issued with our *FOIA Response*. We further adopt this Protective Order to facilitate and expedite the review of documents containing trade secrets and commercial or financial information either in the Commission's possession and responsive to *GCI's FOIA Request*, or that GCI may obtain from Alascom in participating in the *Alascom Waiver Petition* proceeding. This Protective Order also applies to material designated as confidential in any subsequent filings regarding *GCI's FOIA Request* or *Alascom's Waiver Petition*. This Protective Order reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated.

3. *Definitions.*

a. *Authorized Representative.* "Authorized Representative" shall have the meaning set forth in paragraph 9 of this Protective Order.

b. *Commission.* "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. *Confidential Information.* "Confidential Information" means (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and that the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information that is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) (FOIA); (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and that the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information; and (iii) information that the Commission has allowed to be examined off-site and that the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information that is privileged or confidential within the meaning of Exemption 4 of the FOIA or that the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information. Confidential Information includes additional copies of and information derived from Confidential Information. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 and 0.461, determine that all or part of the information claimed as Confidential Information is not entitled to such treatment.

d. *Declaration.* "Declaration" means Attachment A to this Protective Order.

e. *Reviewing Party.* With respect to *Alascom's Waiver Petition*, "Reviewing Party" means a person or entity participating in that proceeding or considering in good faith filing a document in that proceeding. With respect to *GCI's FOIA Request*, "Reviewing Party" means an

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<sup>5</sup> See FOIA Request Control No. 2003-208, Letter from Joe D. Edge, Counsel for GCI to John Rogovin, General Counsel, Federal Communications Commission (Apr. 24, 2003); Letter from Charles R. Naftalin, Counsel for Alascom to John Rogovin, General Counsel, Federal Communications Commission (Apr. 24, 2003).

Authorized Representative, as that term is defined in paragraph 9 of this Protective Order, of GCI.

f. *Submitting Party.* "Submitting Party" means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

4. *Procedures for Claiming Information is Confidential.* With respect to *Alascom's Waiver Petition*, the Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in paragraph 3 of this Protective Order. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, "CONTAINS CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information. With respect to *GCI's FOIA Request*, information in the Commission's possession that is responsive to *GCI's FOIA Request* shall bear on the front page in bold print, "CONTAINS CONFIDENTIAL INFORMATION."

5. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for preparation and conduct of these proceedings and the Investigation of Alascom Tariff FCC No. 11, CC Docket No. 95-182, and any subsequent judicial proceeding arising directly from these proceedings, and shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. This provision shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

6. *Storage of Confidential Information at the Commission.* The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

7. *Access to Confidential Information.* Confidential Information shall only be made available to Commission staff, Commission consultants, and to counsel to the Reviewing Parties, or, if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

8. *Permissible Disclosure.* Counsel to a Reviewing Party or such other person designated by the Reviewing Party pursuant to paragraph 7 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 9 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

9. Authorized Representatives shall be limited to:

a. Counsel for the Reviewing Parties to these proceedings, including in-house counsel actively engaged in the conduct of this proceeding, and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services in these proceedings, provided that such persons do not participate directly in any business decisions in their current positions for the Reviewing Parties;

b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding, provided that such persons do not participate directly in any business decisions in their current positions for the Reviewing Parties.

For purposes of this Protective Order, “business decisions” include: (1) approving pricing for GCI’s wholesale and retail long distance telecommunications services, (2) determining to deploy long distance telecommunications infrastructure by construction or lease of facilities and their capacities, or by resale of service, and (3) conducting location specific or customer specific marketing efforts for long distance services.

10. *Inspection of Confidential Information.* Confidential Information in the Commission’s possession and responsive to *GCI’s FOIA Request* may be obtained by contacting the following Commission representative:

Julie M. Saulnier  
Pricing Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
455 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
(202) 418-1598

In addition, Confidential Information relied upon by the Submitting Party in supporting the *Alascom Waiver Petition* shall be maintained by the Submitting Party for inspection at two or more locations, one of which shall be in Washington, D.C. and another of which shall be at the Submitting Party’s headquarters in Alaska. Confidential Information maintained by the Submitting Party may be inspected by contacting the following Submitting Party representative:

Charles R. Naftalin  
Counsel for Alascom, Inc.  
Holland & Knight  
2099 Pennsylvania Ave., NW, Suite 100  
Washington, DC 20006  
(202) 457-7040

Inspection shall be carried out by Authorized Representatives upon reasonable notice (generally not to exceed one business day) during normal business hours.

11. *Copies of Confidential Information.* The Commission or the Submitting Party shall provide a copy of the Confidential Information to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. Upon request, copies of Confidential Information in electronic format shall be provided on diskette or CD, as applicable, and at the cost of one dollar per diskette or CD. The Submitting Party shall provide copies of Confidential Information within three business days after receipt of a written request. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for preparation and use in these proceedings. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

12. *Filing of Declaration.* Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

13. *Pleadings Using Confidential Information.* Submitting Parties and Reviewing Parties may, in any pleadings that they file in these proceedings, or the Investigation of Alascom Tariff FCC No. 11, CC Docket No. 95-182, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order in the Matters of General Communication, Inc., FOIA Control No. 2003-208 and Alascom Petition for Waiver, WC Docket No. 03-18."

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those

Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

14. *Violations of Protective Order.* Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

15. *Termination of Proceedings.* Unless otherwise ordered by the Commission or a court of competent jurisdiction, within two weeks after final resolution of these proceedings (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made. Authorized representatives shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Such certification shall be delivered not more than three weeks after conclusion of these proceedings. Any Confidential Information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with this Protective Order unless such Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court of competent jurisdiction.

16. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use material derived from any Confidential Information to seek disclosure in any proceeding other than these proceedings or

the Investigation of Alascom Tariff FCC No. 11, CC Docket No. 95-182; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

17. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or order production of Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production of disclosure of any Confidential Information.

18. *Additional Rights Preserved.* The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to challenge the Submitting Party's claims of confidentiality or request further or renewed disclosure of Confidential Information.

19. *Effect of Protective Order.* This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

20. *Authority.* This Protective Order supersedes the protective order issued April 10, 2003 in connection with *GCI's FOIA Request*, and is issued pursuant to sections 4(i) and 4(j) of the Communications Act, as amended,<sup>6</sup> section 0.457(d) of the Commission's rules,<sup>7</sup> and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules.<sup>8</sup>

FEDERAL COMMUNICATIONS COMMISSION

Deena M. Shetler  
Deputy Chief, Pricing Policy Division  
Wireline Competition Bureau

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<sup>6</sup> 47 U.S.C. §§ 154(i) and (j).

<sup>7</sup> 47 C.F.R. § 0.457(d).

<sup>8</sup> 47 C.F.R. §§ 0.91 and 0.291.

Attachment A to Protective Order

DECLARATION

In the Matter of	)	
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General Communication, Inc.	)	FOIA Control No. 2003-208
On Request for Inspection of Documents	)	
	)	
Alascom Petition for Waiver from the	)	WC Docket No. 03-18
Commission Rule and Orders Requiring an	)	
Annual Tariff Filing	)	
	)	

I, \_\_\_\_\_, hereby declare under penalty of perjury that I have read the Protective Order (DA 03-2278, released July 10, 2003) in these proceedings, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of these proceedings and the Investigation of Alascom Tariff FCC No. 11, CC Docket No. 95-182. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that the Protective Order is also a binding agreement with the Submitting Party, and in instances of release of Confidential Information by the Federal Communications Commission pursuant to FOIA, the Submitting Party is the party that originally provided the information to the Commission.

(signed) \_\_\_\_\_

(name) \_\_\_\_\_

(representing) \_\_\_\_\_

(title) \_\_\_\_\_

(description of employment duties) \_\_\_\_\_

(employer) \_\_\_\_\_

(address) \_\_\_\_\_

(phone) \_\_\_\_\_

(date) \_\_\_\_\_